

OCT 5 1951

CHARLES ELMORE DOOLEY

LIBRARY

SUPREME COURT, U.S.

IN THE
SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1951

No. 1

GEORGIA RAILROAD & BANKING COMPANY,
Appellant

vs.

CHARLES D. REDWINE, State Revenue Commissioner,
Appellee

Answer of Appellee to Motion of Appellant
to Terminate Continuance and Decide Appeal

EUGENE COOK,
Attorney General of Georgia
M. H. BLACKSHEAR, JR.,
Deputy Assistant Attorney
General of Georgia

Counsel for Appellee

**IN THE
SUPREME COURT OF
THE UNITED STATES**

OCTOBER TERM, 1951

No. 1

**GEORGIA RAILROAD & BANKING COMPANY,
Appellant**

vs.

**CHARLES D. REDWINE, State Revenue Commissioner,
Appellee**

**Answer of Appellee to Motion of Appellant
to Terminate Continuance and Decide Appeal**

**TO THE HONORABLE THE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:**

Appellee, Charles D. Redwine, who is State Revenue Commissioner of Georgia, objects to and opposes appellant's motion to terminate the continuance ordered by this Court on February 20, 1950, and for cause thereof says:

1.

On February 20, 1950, this court entered the following order in this case:

"Per Curiam: Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient state remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies."

At that time appellee was enjoined from taking any steps looking toward a final judicial determination of appellant's liability for ad valorem taxes. (Copy of this injunction and order modifying same is set forth on page 8 of brief in opposition to the motion to terminate continuance filed by intervenors amici curiae in this case.) After the entering of the above quoted order of this Court the injunction was modified in order to permit the appellee to proceed to assess the valuation of the property of appellant, but appellee was restrained from initiating any other procedure to test ad valorem taxability of the appellant.

Appellee then proceeded to assess the property of appellant and after such assessment an appeal was taken to the Superior Court of Richmond County, Georgia. That court found all issues of taxability in appellee's favor. Appellant then appealed this decision to the Supreme Court of Georgia, which court in a four to three decision held that the procedure followed was inappropriate but rendered no opinion on the merits of the claim. (See copy of the opinions filed in that decision on page 7 of Appellant's motion to terminate the continuance.) Appellee has at all times since October 2, 1949 been restrained from initiating any other remedies to have the issue of appellant's ad valorem taxability decided by the Courts of Georgia. Appellee insists that other State remedies exist which have not been pursued.

(a) Remedy by affidavit of illegality

Appellant has urged as its reason for refusing to consent to a modification of the injunction, for the purpose of allowing appellee to take the initial steps of testing the issue of taxability by the affidavit of ille-

gality, that once the fi. fas. are placed in the hands of the various Sheriffs, the appellee could then say that the matter was beyond his control and thereby place the appellant under the burden of proceeding against each Sheriff for an injunction restraining the levies and, that such procedure would consequently involve a multiplicity of actions. Appellee has been willing to enter into a stipulation, and appellee remains willing to enter into a stipulation, that should the procedure of affidavit of illegality be used, appellee will issue only such fi. fas. as will properly raise all issues of taxability that now exist between appellant and appellee. And, further, appellee is willing to stipulate that such fi. fas. as are issued will be subject to recall by the appellee from the Sheriffs into whose hands they fall for levy, and that such Sheriffs will at all times be and remain merely agents of appellee for the purpose of raising the issue of taxability.

(b) Partial payment and suit for refund.

It is the position of appellee that appellant has failed to avail itself of the remedy of payment of the taxes, in whole or in part, and suing for refund as provided by Section 92-8436 of the Georgia Code Annotated, Pocket Supplement. At least the State's portion of the tax is subject to this procedure although some doubt may exist as to its propriety for the portion due to the taxing subdivisions. Appellee insists that if appellant had made a sincere effort to test the issue of taxability before the courts of Georgia, this method could be used without the slightest danger of irreparable injury to appellant for the simple reason that should the determination of liability be against it, it would have already paid the taxes, in whole or in part, that is rightfully owed; and should appellant be successful

4

in resisting liability, any payments made would be refunded, plus 6% interest from the date of payment.

**(c) Suit for taxes brought by State Revenue
Commissioner**

On page 2 of appellant's motion to terminate the continuance and decide the appeal reference is made to a letter, dated March 30, 1950, contained in its Appendix on page 6, which purports to conform in writing the proceedings on oral argument before the bar of this Honorable Court. The letter mentions the plain right of the State Revenue Commissioner to bring suit in the courts of Georgia to collect the tax and the additional statement that the State Revenue Commissioner will not bring such suit. At the time of the discussion mentioned in this letter, it was the belief of counsel for appellee that the injunction pending appeal restrained the use of this method of testing the issue of taxability. The appellant's omission to state this belief of counsel for appellee results in creating the false impression that it is the appellee who is thwarting the pursuit of all available State remedies, when in fact the deliberate refusal and failure on the part of appellant to consent to a modification of the injunction is responsible for the failure to exhaust all possible remedies before the courts of Georgia.

2.

It is the position of the appellee that appellant's refusal to consent to a modification of the injunction pending appeal, as amended, has resulted in direct disobedience of the order entered on February 20, 1950, by this Honorable Court directing this cause continued until appellant asserts "such remedies."

WHEREFORE, the appellee urges that this motion to terminate the continuance and decide the appeal be denied, and that appellant be directed to consent to the modification of the injunction in order that the appellee may take such steps as will raise the issue of taxability of appellant's property before the courts of Georgia.

Respectfully submitted.

EUGENE COOK,
Attorney General of Georgia

M. H. BLACKSHEAR, JR.,
Deputy Assistant Attorney
General of Georgia.

201 State Capitol
Atlanta, Georgia

GEORGIA, FULTON COUNTY.

In person appeared before the undersigned officer authorized to administer oaths, M. H. Blackshear, Jr., who, being sworn on oath says that he is of counsel for appellee in the above case and has personal knowledge of the facts stated in the foregoing answer to motion of appellant to terminate continuance and decide appeal.

M. H. BLACKSHEAR, JR.

Sworn to and subscribed before me
this _____ day of October, 1951.

Notary Public